IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 11861 of 2001(K)

PETITIONER:

DR.JAIRAJ P.G., LECTURER IN CIVIL ENGINEERING,
COLLEGE OF ENGINEERING,
THIRUVANANTHAPRUAM 695 016.

BY ADV. SRI.S.RADHAKRISHNAN

RESPONDENTS:
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1. **THE DIRECTOR OF TECHNICAL EDUCATION,**
   THIRUVANANTHAPRUAM.

2. **STATE OF KERALA REP.BY**
   COMMISSIONER AND SECRETARY TO THE
   GOVERNMENT HIGHER EDUCATION(G)
   DEPARTMENT, GOVERNMENT OF KERALA,
   THIRUVANANTHAPRUAM.

BY GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP. NO.11861/2001

ORDER ON CMP.18961/2001 IN OP. 11861/2001

DISMISSED

12.09.2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER GO(MS) NO.82/95/G.EDN. DT. 29.6.95.

EXT.P2:- COPY OF THE ORDER NO.L2/21083/94/DTE DT. 5.7.95 ISSUED BY THE 1ST RESPONDENT.

EXT.P3:- COPY OF THE EXTRACT OF THE BOND EXECUTED BY THE PETITIONER DT. 25.7.95.

EXT.P4:- COPY OF THE ORDER GO(P) NO.81/90/H.EDN. DT. 27.3.90.

EXT.P5:- COPY OF THE REPRESENTATION DT. 22.10.96 .

EXT.P6:- COPY OF THE ORDER NO.EA4/41802/95(2)/DTE DT. 21.12.99.

EXT.P7:- COPY OF THE RELEVANT EXTRACT OF THE GOVERNMENT ORDER NO.GO(P) 68/2000/ H.EDN. DT. 18.5.2000.

EXT.P8:- COPY OF THE LETTER NO.23778/G1/2000/H.EDN. DT. 3.1.01.

EXT.P9:- COPY OF THE LETTER NO.GE.14/C/23 DT. 2.4.97.

/TRUE COPY/

P.S. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.11861 of 2001-K

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Dated this the 12th day of September, 2007.

JUDGMENT

1. The petitioner, while working as a member of the teaching staff of the Engineering College, Thiruvananthapuram, was deputed by the Government in terms of Ext.P1 Government Order of sanction for Ph. D. Programme at the Indian Institute of Science, Bangalore. The Government thereby, as evident from Ext.P2, sponsored the petitioner to join the Ph. D. Programme at IIS, Bangalore. By the terms of Ext.P2, he was treated to be as on deputation with entitlement to salary and allowances but with the obligation to execute a bond undertaking to serve the Government for a minimum period of five years after successful completion of the Ph. D. Programme. He executed Ext.P3 bond in terms of

which, among other things, the Government reiterated that he was entitled to have the period of such higher studies and the period for travel to and from the place of the course as period of duty and as service, qualifying for increment, leave and pension, if it will otherwise count. The petitioner had also by that bond, bound himself to serve the Government for a minimum period of five years after successful completion of the Ph. D. Programme. The petitioner, following the aforesaid, was under deputation from 26-7-1995 to 23-7-1998. He successfully completed the Ph. D. Programme and is serving the Government.

2. The issue that arises for decision is whether the grant of higher scale in terms of Ext.P7 G.O.(P).68/2000/H.Edn. dated 18-5-2000 could be made by treating the entire period of deputation commencing from 26-7-1995 or whether the period of deputation was to be reckoned only from 1-1-1996 to determine the qualifying service for

placement in Sr./Selection Grade.

3. There is no dispute that the petitioner was deputed while serving as a teacher in an Engineering College and that the deputation was under the Quality Improvement Programme of the AICTE. The controversy as to the date from which the period of deputation is to be reckoned as qualifying service for placement in Sr./Selection Grade arises because of Clause 3.2 in Ext.P7 Government Order which states that the revised scales of pay would be effective from 1st January, 1996. On the basis of that clause, the Government takes the stand that the period of deputation of the petitioner under the QIP Scheme before 1-1-1996 cannot be reckoned as qualifying service for placement in Sr./Selection Grade.

4. If the petitioner had proceeded on study leave, he would have been governed by the Rules contained in Appendix

VI to Part I Kerala Service Rules. It includes Rule 19 which, among other things, provides that study leave will count as service for promotion, pension and seniority. It shall also count as service for increments in the post in which the Government servant would have continued but for going on study leave. While an incumbent proceeding on a study leave would be entitled to such benefit, a person who is deputed by the employer - Government - under a quality improvement programme, continues to be on duty and not on leave. Therefore, everything that he would earn by virtue of being an officer on duty would accrue to him. There can be no break of service or any span of service which cannot be treated, in any manner, in accordance with law. The deputation of the petitioner was under the Quality Improvement Programme which was the requirement of the State to augment the quality of the faculty in the Engineering Colleges. It is the requirement in terms of AICTE norms. That public

purpose is achieved by screening the teachers and choosing from among them for being deputed for higher studies to reach at the quality in service that is aimed for achievement. So much so, the entire period of deputation has the same quality, content and colour and cannot be classified on the basis of any cut off date to divaricate the period of deputation to be treated differentially. That apart, Clause 3.11 of Ext.P7, which deals with career advancement, is categoric that the period of deputation of teachers in Engineering Colleges under Quality Improvement Programme scheme of AICTE will be reckoned as qualifying service for placement in Senior/Selection Grade. That clause does not prescribe any classification of teachers proceeding under the QIP Scheme on the basis of any cut off date as 1-1-1996. Ext.P7 is an executive order. Clause 3.2 of Ext.P7, as already noticed, only states that the revised scales of pay would be effective from 1-1-1996. This means that the

revised scales of pay in terms of Ext.P7 would be operative only from 1-1-1996. It was not as if all the provisions in that Government order were to come into effect with effect from 1-1-1996. Therefore, while determining the length of service of the petitioner while on deputation under the QIP scheme for the purpose of determining the qualifying service for placement in Senior/Selection Grade in terms of Clause 3.11 of Ext.P7 Government Order, he would be entitled to the benefit of such placement in terms of money only from a date on or after 1-1-1996. This is the effect of Ext.P7.

5. Petitioner has yet another grievance. It is his case that while serving as a teacher he was entitled to earn leave in lieu of vacation, if he actually works during vacation and that therefore, having been deputed for higher studies, he is entitled to earn leave for the period he could have enjoyed vacation had he been continuing in the

Engineering College. This claim is attempted to be fortified by relying on the provisions in Appendix VI to Part I KSR, which deals with earned leave. But, as already noticed, Appendix VI does not really govern the case in hand because, the petitioner was not on leave but was on duty and on deputation. Under such circumstances, the plea of the petitioner that he was entitled to earn leave in lieu of the period he would have had, had he been continuing in the Engineering College does not stand.

In the result, this writ petition is allowed in part declaring that the entire period of the deputation of the petitioner in terms of Exts.P1 and P2 is service for the purpose of all service benefits and for placements and promotion, including in terms of Ext.P7, however that monetary benefits would accrue only on or after 1-1-1996. The impugned actions and orders contrary to what is declared

above are quashed. It is directed that all monetary benefits flowing out of the effect of this declaration will be made available to the petitioner within a period of three months from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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JUDGMENT

Dated: 12th September, 2007.